

UNITED STATE DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
In the Matter of the Application of
ALTHEA STEVENS
Candidate-Aggrieved

Case No.: _____ / _____

-against-

NOTICE OF REMOVAL

ERIC STEVENSON, as candidate for the
Public Office of Member of the City
Council District and GARFIELD HOLLAND
as the candidate's contact person: AND

FREDERIC M. UMANE, MIGUELINA CAMILO,
JOSE MIGUEL ARAUJO, GINO A. MARMORATO,
MICHAEL MICHEL, RODNEY L. PEPE-SOUVENIR,
SIMON SHAMOUN, PATRICIA ANNE TAYLOR,
TIFFANY TOWNSEND and JOHN WM. ZACCONE,
being the Commissioners of the Board of Elections in
The City of New York.

Respondents.

-----X
TO THE CLERK OF COURT:

Notice of Removal to the United States District Court

Comes Now the Respondent Eric Stevenson and in direct support of his Notice to this
Court and all parties, hereby alleges, states, and provides the following:

By the filing of this Notice with the Clerk of this Court, together with the attached and
corresponding Notice of Petition and Petition for removal that was filed in the United States
District Court prior, these state proceedings are now REMOVED, by automatic operation of
federal law, and the Respondent now formally notifies the Court and all parties of that same fact.

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SDNY
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2021

Pursuant to the express and specific language of 28 U.S.C. 1441, et seq., immediately upon the filing of this Notice, with the Clerk of this Court, this case has been already removed; The removal of jurisdiction from this Court is automatic by operation of federal law, and does not require any additional written order from the District Judge to cause this removal to become “effective” – the removal is an automatic judicial event, and immediate by operation of law.

GROUND FOR REMOVAL

The grounds for removal this lawsuit is a civil action within the meaning of the Acts of Congress relating to removal of causes. The removal of this action to this Court is under 28 U.S.C. §1441 to §1446 because this Notice of Removal is filed under extraordinary circumstances, which is the date Defendant received the Summons, Complaint in this action.

Pursuant to 28 U.S.C. § 1446(d), written notice of the removal of this action will be promptly served to Petitioner and a Notice of Filing, Notice of Removal will be filed with the Supreme Court of the State of New York, Bronx County. The United States District Court for the District of New York is the proper place to file this Notice of Removal under 28 U.S.C. § 1441(a) because it is the federal district court that embraces the place where the original action was filed and is pending.

The initial grounds for removal is based upon a notice of petition and petition filed and served on Respondent Eric Stevenson Candidate for 16th District of New York City Council, Bronx County, the notice of petition and petition is arbitrary to the campaign election of candidate Eric Stevenson whose civil rights is being deprived and challenge by Althea Stevens

another candidate who is running for the same position within the 16th District of the City of New York Council, Bronx County.

Garfield Holland is the campaign manager for Respondent Eric Stevenson who is listed as a Respondent, the other Respondents are the Commissioners of the Board of Election of the City of New York who had been equally served with notice of petition and petition to remove Respondent Eric Stevenson from the election due process.

Chapter 50-a section 1139 of the NYC Charter is void ab initio as the NYC Council lacks the authority under the NYS Constitution and the Municipal Home Rule Act to enact eligibility requirements on candidates for the City Council.

Respondent-Candidate, Eric Steveson, seeks an order declaring NYC Charter, Chapter 50-a section 1139, unconstitutional in that it violates Respondent-Candidate's federal and state constitutional rights to due process, equal protection, first and fourteenth amendment rights, and in violation of the voting rights act in that:

(1). The law (NYC Charter, Chapter 50-a section 1139) purports to prevent persons who have been previously convicted of certain criminal offenses from holding certain public offices in the City of New York. The law does not prohibit persons who have been convicted of certain offenses from running for office. Accordingly, this proceeding to prevent Mr. Stevenson from appearing on the ballot is a misapplication of the subject law. As such, this proceeding should be dismissed on the ground that the subject law does not prevent Mr. Stevenson from appearing on the ballot;

(2). It is well known and the Court should take judicial notice of the fact that persons who have committed certain offenses identified in the subject law are disproportionately African American and Latino. Any application of the subject law would disproportionately harm New Yorkers who are African American and Latino. the law will have a disproportionately racial impact, and is therefore violative of the 1st and 14th Amendments to the US Constitution and Sec. 2 of the Voting Rights Act.

Accordingly, the law should be stricken and not applied to

Eric Stevenson;

(3). As such, NYC Charter, Chapter 50-a section 1139 serves essentially as a “Bill of Attainder”, prohibited by the New York and United States Constitution. Accordingly, the law should be stricken as unconstitutional;

(4). NYC Charter, Chapter 50-a section 1139, by its terms, is to take effect immediately. This would prohibit those who have been previously convicted of certain crimes from ever holding office even though such a prohibition was not in effect at the time of Stevenson’s conviction. As such, NYC Charter Chapter 50-a section 1139’s retroactive effect, implicates fundamental rights of the voter and by disqualifying, *in perpetuity*, candidates like Mr. Stevenson from NYC public funds or public office. Mr. Stevenson is confident, at the adjudication of this matter, this court will find NYC Charter, Chapter 50-a section 1139, unreasonably impinges on the Candidate and voter’s fundamental right of the opportunity to vote for a candidate of their choosing, and the corresponding candidate’s individual right to run for public office, as there are less restrictive means to accommodate the purported important governmental interests in the

F3d 119, 129 (2d Cir 2020). As a mid-cycle change in the rules of ballot access, the law here is subject to strict scrutiny. The law is not narrowly tailored to any state interest. The law does not use the least restrictive means to advance its purpose.

(6). That this matter should be held in abeyance pending the outcome of the recently filed Southern District Federal action bearing title: Malikah Shabazz et. al. vs. New York City Campaign Finance, et. al., Case No. 21-CV-3069, wherein it presents the identical challenge to the constitutionality of NYC Charter, Chapter 50-a section 1139 (2021) and its applications to persons like Respondent-Candidate, and which outcome may moot the current proceeding before this court.

If any question arises as to the propriety of the removal of this action, Defendant respectfully request the opportunity to present a brief in support of its position that this case is removable. See Sierminski v. Transouth Fin. Corp., 216 F.3d 945, 949 (11th Cir. 2000) (announcing general rule that post-removal evidence in assessing removal jurisdiction may be considered by the Court).

The district courts of the United States have original jurisdiction over all civil actions arising under the Constitution, laws, and treaties of the United States. See 28 U.S.C. §1331. A case may be removed to federal court if it could have been brought in federal court originally. See 28 U.S.C. § 1441(a); see also Beneficial Nat'l Bank v. Anderson, 539 U.S. 1, 6, (2003).

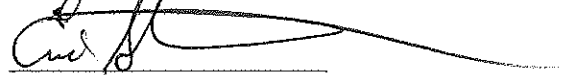
CONCLUSION

It is well established that federal district courts have supplemental jurisdiction over state law claims that share a "common nucleus of operative fact" with federal claims. Jamal v. Travelers Lloyds of Tex. Ins. Co., 97 F. Supp. 2d 800, 805 (S.D. Tex. 2000) (quoting City of Chicago v. Int'l Coll. of Surgeons, 522 U.S. 156, 164-65 (1977)). This principle applies not only

to cases originally brought in federal court, but also to those cases removed to federal court. Id. at 806.

WHEREFORE, the undersigned Respondent Eric Stevenson, notifies the Court and all other parties that this cause is now removed, that the Bronx Supreme Court now has absolutely no jurisdiction for any judgment in this cause, bar none, unless and until the United States District Court may or may not remand, and further moves for all other relief that is just and proper.

Respectfully submitted

A handwritten signature in black ink, appearing to read 'Eric Stevenson', is written over a horizontal line.

Eric Stevenson
1261 Chisholm Street
Bronx, New York 10459
(646)455-9407

FAX: 718-829-0032
EMAIL: skschlein@gmail.com
CELL: 917-359-3186

At an Ex-Parte and Urgent Motion
Part of the Supreme Court of the
State of New York, held in and for
the County of Bronx, at the
Courthouse located at 851 Grand
Concourse, Bronx, NY on April
6, 2021.

P R E S E N T: **KIM A. WILSON**

-----X
In the Matter of the Application of Althea Stevens,
as Candidate Aggrieved,

Petitioner,

-against-

INDEX NO.: 804636/2021e

ORDER TO SHOW CAUSE
TO INVALIDATE
DESIGNATING PETITION

Eric Stevenson as a candidate for the Public Office
Of Member of the City Council from the 16th
Council District and Garfield Holland
as the candidate's Contact Person; AND

Frederic M. Umane, Míquelina Camilo, Jose
Miguel Araujo, Gino A. Marmorato, Michael
Michel, Rodney L. Pepe-Souvenir, Simon
Shamoun, Patricia Anne Taylor, Tiffany Townsend
And John Wm. Zacccone, being the Commissioners
Of the Board of Elections in the City of New York.

Respondents,

For an order invalidating and declaring null and void
that certain Designating Petition filed with the Board
of Elections purporting to designate the within
named Candidate for Public Office from Bronx County
to be voted upon in the Democratic Party Election
to be held on June 22, 2021 and enjoining the
New York City Board of Elections from placing the
Respondent Candidate's name on the official ballot
and voting machines for said Election.

-----X
Upon the annexed Verified Petition duly verified by the Petitioner on the 5th day of April

2021, as set forth on the verification annexed to the Petition, it is

AT A VIRTUAL CONFERENCE AND/OR TELEPHONE CONFERENCE
 ORDERED, that the above named Respondent show cause before Hon.

John W. Carter, a Justice of this Court, at a Special Election Matters Part in Room 607 at the Bronx County Courthouse located at 851 Grand Concourse, Bronx, New York on April 12th, 2021 at 2:00 A.M./P.M., of that day, or as soon thereafter as counsel can be heard, why an Order should not be made herein: (1) invalidating and declaring null and void the Designating Petition filed on the Respondent's behalf purporting to designate said Respondent Candidate for the Public Office of Member of the City Council from the 16th Council District, Bronx County; and (2) enjoining and restraining the Respondent Commissioners of the Board of Elections in the City of New York from printing and placing the Respondent's name upon the official ballots and voting machines to be used in the upcoming Democratic Primary Election, to be held on June 22, 2021, and it is further;

ORDERED, that Respondent Board of Elections, in accordance with Section 3-220(6) of the Election Law of the State of New York and the duly adopted rules of the Board of Elections in the City of New York, shall make available at the office of the Board where such records are maintained in the ordinary course of business during normal business hours, including, but not limited to the voter registration records of the Respondent Candidate, the aforesaid designating petition, cover sheet, and any amended cover sheet, identification number application form(s), and any other documents in support of or related to the designation of the Respondent Candidate. Any party seeking copies of the aforesaid documents shall, upon payment of the applicable fee as established by law and/or regulation, receive the same in the ordinary course of business; and

SUFFICIENT CAUSE APPEARING THEREFORE, let service of this Order and the papers upon which it is granted be deemed due, timely and sufficient if made as follows:

Hon. Kim Adair Wilson, J.S.C.



J.S.C.

1. In light of the public health emergency currently existing in the State of New York, upon the Respondent Candidate for Public Office on or before April 8, 2021, by enclosing same in a securely sealed and duly postpaid wrapper and sending same by overnight, next day USPS delivery or any other recognized overnight courier, waiving the requirement of any signature at the candidate's address set forth on the Designating Petition as the residence;
2. In light of the public health emergency currently existing in the State of New York, upon the Respondent Candidate's Contact Person, on or before April 8, 2021, by enclosing same in a securely sealed and duly postpaid wrapper and sending same by overnight, next day USPS delivery or any other recognized overnight courier, waiving the requirement of any signature at the Contact Person's address set forth on the Designating Petition Cover Sheet as the residence;
3. Upon the Respondent Commissioners of the Board of Elections in the City of New York, ~~ELECTRONIC MAIL TO: SERVICE.NYCBOE2021@BOE.NYC WITH THE~~ on or before April 8, 2021, by ~~personally delivering a true copy of this Order and the~~ CAPTION OF THE CASE AND INDEX NUMBER PLACED IN THE SUBJECT LINE OF THE ~~annexed papers upon the person designated by said Board to receive such service at 32~~ EMAIL. PETITIONER AND/OR COUNSEL MUST RETAIN AND FILE THE AUTO-REPLY ~~Broadway, New York, New York; and~~ CONFIRMATION EMAIL THAT WILL BE SENT UPON RECEIPT BY THE BOARD AS AN ~~That such service should be deemed good and sufficient service thereof, and such service~~ EXHIBIT TO PROOF OF SERVICE AND ~~shall constitute sufficient notice hereof.~~ THAT SUCH SERVICE SHOULD BE DEEMED GOOD AND SUFFICIENT SERVICE THEREOF, AND ~~SUCH SERVICE SHALL CONSTITUTE SUFFICIENT NOTICE HERETO~~

Hon. Kim Adair Wilson, J.S.C.


 J.S.C.

APR 6 2021

APR 6 2021

ENTER


 KIM A. WILSON

Hon. Kim Adair Wilson, J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X
In the Matter of the Application of Althea Stevens,
as Candidate Aggrieved,

INDEX NO.: 804636/2021E

Petitioner,

VERIFIED PETITION TO
INVALIDATE
DESIGNATING PETITION

-against-

Eric Stevenson as a candidate for the Public Office
Of Member of the City Council from the 16th
Council District and Garfield Holland
as the candidate's Contact Person; AND

Frederic M. Umane, Miguelina Camilo, Jose
Miguel Araujo, Gino A. Marmorato, Michael
Michel, Rodney L. Pepe-Souvenir, Simon
Shamoun, Patricia Anne Taylor, Tiffany Townsend
And John Wm. Zacccone, being the Commissioners
Of the Board of Elections in the City of New York.

Respondents,

For an order invalidating and declaring null and void
that certain Designating Petition filed with the Board
of Elections purporting to designate the within
named Candidate for Public Office from Bronx County
to be voted upon in the Democratic Party Election
to be held on June 22, 2021 and enjoining the
New York City Board of Elections from placing the
Respondent Candidate's name on the official ballot
and voting machines for said Election.

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Petitioner herein respectfully alleges as follows:

1. Petitioner Althea Stevens resides at 800 Grand Concourse, Bronx, New York 10451, and is a duly qualified voter enrolled in the Democratic Party and entitled to vote at the next Primary Election in the 16th Council District, Bronx County. Petitioner is also a candidate aggrieved within the meaning of NYS Election Law § 16-102.

2. The Petitioner is informed by counsel and believes that the last day to institute this proceeding is April 8, 2021, and that said time has not elapsed. By reason of this time limitation, this application is being made by Order to Show Cause rather than by Notice of Motion, and alternative service of process is requested.

3. That certain papers were filed with the Respondent Board of Elections on or about March 25, 2021 allegedly constituting a Designating Petition purporting to designate the Respondent Candidate for Public Office from the 16th Council District, Bronx County.

4. That at all times hereinafter mentioned, the Respondent members of the Board of Elections are Commissioners of Elections of the City of New York and constitute the Board of Elections in the City of New York.

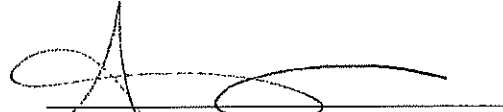
5. That pursuant to the Election Law of the State of New York and the Petition Rules promulgated by the Board of Elections in the City of New York for Designating Petitions, the Democratic Primary Election is scheduled to be held on June 22, 2021.

6. Upon information and belief, the Respondent Candidate is not qualified and/or eligible to be elected to, or hold, the Public Office of council member as a result of his conviction of several felonies pursuant to Title 18 of the United States code as more particularly set forth in Local Law No. 15 for the Year 2021.

7. Upon information and belief, such convictions have not been vacated pursuant to Federal Law, nor has the Respondent Candidate been pardoned by the President. The Petitioner seeks leave to assert and prove the foregoing at a hearing held herein.

8. Petitioner further adopts and asserts the factual and legal arguments proffered by her counsel in his Attorney's Affirmation, incorporated and made a part of the pleadings herein.

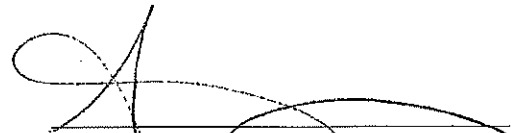
WHEREFORE, the Petitioner requests that the annexed Order to Show Cause be signed, that the relief sought be granted, and that the Petitioner be granted such other and further relief as the Court may deem just and proper.


Althea Stevens


PETITIONER'S VERIFICATION

State of New York)
)ss.:
County of Bronx)

Althea Stevens, being duly sworn, deposes and says that she is the Petitioner herein and has read the foregoing Petition and knows its contents; that same is true to her knowledge, except as to those matters herein alleged upon information and belief and, as to those matters, believes them to be true.


Althea Stevens

Sworn to before me on
April 5, 2021



Stanley K. Schlein
Notary Public
#03-4634627
Qualified in Bronx County
Commission Expires 7/31/22

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X
In the Matter of the Application of Althea Stevens,
as Candidate Aggrieved,

INDEX NO.: 804636/2021E

Petitioner,

AFFIRMATION IN
SUPPORT OF PETITION

-against-

Eric Stevenson as a candidate for the Public Office
Of Member of the City Council from the 16th
Council District and Garfield Holland
as the candidate's Contact Person; AND

Frederic M. Umane, Miguelina Camilo, Jose
Miguel Araujo, Gino A. Marmorato, Michael
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and voting machines for said Election.

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STANLEY K. SCHLEIN, an attorney duly admitted to practice law in the State of New York

hereby affirms the following to be true under penalty of perjury:

1. I am the attorney for the Petitioner herein, Althea Stevens, in support of her application to
declare the Designating Petition of Candidate Respondent Eric Stevenson ("Stevenson") to be
void and his name to be stricken from the proposed ballot for the public office of council

member from the 16th Council District, Bronx County. A copy of Stevenson's Designating Petition Cover Sheet is attached hereto and made a part hereof as **EXHIBIT 1**.

2. In or about January 2014, Stevenson was found guilty of four separate felony counts in violation of 18 U.S.C. § 1349, 371, 666(a)(1)(B) and 1951 respectively.

3. On May 21, 2014, "the district court sentenced Stevenson to an aggregate term of 36 months of imprisonment and . . . also entered a preliminary order of forfeiture in the amount of \$22,000.00 representing the amount of the bribes." A true and accurate copy of the decision of the United States Court of Appeals for the Second Circuit affirming the conviction, decided August 17, 2016, is attached hereto and made a part hereof as **EXHIBIT 2**. See Exhibit 2, pgs. 2-3 (emphasis added).

4. Stevenson is a duly enrolled voter in the Democratic Party residing at 1261 Chisholm Street, Bronx, New York and filed the Designating Petition referred to herein above on March 25, 2021. A true and accurate copy of Stevenson's voter registration records, provided by the New York City Board of Elections, are attached hereto and made a part hereof as **EXHIBIT 3**.

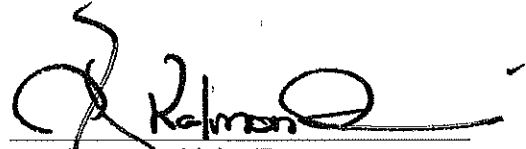
5. The New York City Council passed legislation on February 11, 2021 that was approved by the Mayor on February 25, 2021 as Local Law No. 15 for the year 2021. In salient part, § 1139 2. and 5. specifically state that ". . . no person shall be eligible to be elected to, or hold, the office of . . . council member who has been convicted . . . of a felony . . . defined in § 666 of title 18 of the United States code; . . . § 1951 of title 18 of the United States code." A full and complete copy of this Local Law is attached hereto and made a part hereof as **EXHIBIT 4** (emphasis added).

6. Accordingly, and by virtue of the felony convictions of Stevenson set forth hereinabove, he has been deemed ineligible to seek the office of council member from the 16th Council District, Bronx County.

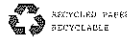
7. Petitioner respectfully requests this Court to invalidate Stevenson's Designating Petition and disqualify his candidacy and to direct the Board of Elections in the City of New York to remove his name from the primary ballot for the election to be held on June 22, 2021.

WHEREFORE, it is respectfully requested that the within Petition be granted in all respects, together with such other and further relief as this Court deems just and proper.

Dated: Bronx, New York
April 5, 2021

A handwritten signature in black ink, appearing to read 'Stanley K. Schlein', is written over a horizontal line.

Stanley K. Schlein, Esq.
Attorney for Petitioner
481 King Avenue
Bronx, New York 10464
(917) 359-3186
skschlein@gmail.com



COVERSHEET

Designating Petitions
Filed In New York City and Counties Which Utilize Petition Identification Numbering Systems

DEMOCRATIC PARTY – BRONX COUNTY

| NAME OF CANDIDATE | PUBLIC OFFICE | PLACE OF RESIDENCE |
|-----------------------|--|---|
| ERIC STEVENSON | Council Member from the 16th Council District Bronx County, City of New York | 1261 Chisholm Street Bronx, New York 10459 |

The following information applies to the above-designated candidate:

Total Number of Volumes in Petition: 2 (TWO)

(Volume numbers not set forth on this Cover Sheet are not claimed in these petitions)

Identification Numbers: BX2100987, BX2101774

The petition contains the number, or in excess of the number, of valid signatures required by the Election Law. The above identification numbers are the only ones to be filed for Eric Stevenson, Candidate for New York City Council District 16 in Bronx County.

Contact Person to Correct Deficiencies:

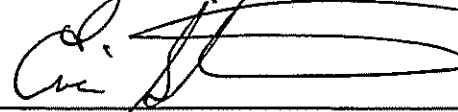
Name: Garfield Holland

Residence Address: 2010 Powell Avenue, Apt. 6J, Bronx, New York 10472

Phone: (914) 620 – 4499

Email: Garfield.Holland@garfieldholland.com

I hereby authorize that notice of any determination made by the Board of Elections be transmitted to the person named above.

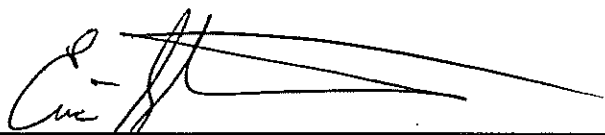


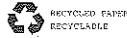
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IN THE CITY OF NEW YORK
42 BROADWAY
2021 MAR 25 P 4:28

Name of Candidate

Website Address

| | |
|------------------------------|--|
| <u>ERIC STEVENSON</u> | <u>www.stevensonforus.com</u> |
|------------------------------|--|


Signature of Candidate or Agent



1
2
3 Before: RAGGI, WESLEY, and DRONEY, *Circuit Judges*.
4
5

6 Appeal from judgment and orders of the United States District
7 Court for the Southern District of New York (Preska, C.J.) imposing
8 a 36-month sentence of imprisonment, ordering forfeiture in the
9 amount of \$22,000, and designating Defendant's contributions to the
10 New York State pension fund as a substitute asset for forfeiture. We
11 **AFFIRM**.
12

13
14 RANDA D. MAHER, ESQ., Great Neck,
15 New York, *for Appellant*.
16

17 PAUL M. KRIEGER, Assistant United
18 States Attorney (Brian A. Jacobs,
19 Assistant United States Attorney, *on*
20 *the brief*), *for* Preet Bharara, United
21 States Attorney for the Southern
22 District of New York, New York,
23 New York, *for Appellee*.
24
25
26

27 DRONEY, *Circuit Judge*:

28 Defendant Eric Stevenson, a former Member of the New York
29 State Assembly representing a district in the Bronx, was convicted

1 after a jury trial of (1) conspiracy to commit honest services wire
2 fraud, *see* 18 U.S.C. § 1349; (2) conspiracy to commit federal
3 programs bribery and to violate the Travel Act, *see id.* § 371; (3)
4 accepting bribes, *see id.* § 666(a)(1)(B); and (4) extortion under color
5 of official right, *see id.* § 1951. Stevenson raises a number of issues on
6 appeal, the majority of which we address in a summary order issued
7 simultaneously with this opinion. Here, we address only
8 Stevenson's challenges to (1) the sentence imposed, (2) the forfeiture
9 order, and (3) the designation of substitute assets for forfeiture. We
10 **AFFIRM.**

11 **BACKGROUND**

12 From 2011 until 2013, Stevenson was a Member of the New
13 York State Assembly as a representative of District 79 in the Bronx.
14 In March 2012, federal law enforcement officers began investigating
15 his interactions with a group of individuals (the "Businessmen")
16 who were seeking assistance in opening and operating adult daycare

1 centers in the Bronx. For the next year, law enforcement officers
2 worked with confidential informants to investigate Stevenson and
3 others, and conducted audio and visual surveillance. Based on that
4 investigation, Stevenson was indicted in the United States District
5 Court for the Southern District of New York and arrested in April
6 2013. At his subsequent jury trial, the Government presented
7 evidence that Stevenson accepted three bribes in 2012 and 2013 in
8 the total amount of \$22,000 in return for various actions to promote
9 the Businessmen's adult daycare centers, including proposing
10 legislation to the New York State Legislature that would have
11 imposed a moratorium on new adult daycare centers, thus favoring
12 the Businessmen. The jury found Stevenson guilty on all counts in
13 January 2014.

14 On May 21, 2014, the district court sentenced Stevenson to an
15 aggregate term of 36 months of imprisonment. The district court
16 also entered a preliminary order of forfeiture in the amount of

1 \$22,000, representing the amount of the bribes. The final judgment,
2 including an order of forfeiture, was entered on May 23, 2014.

3 In December 2014, after it was determined by the district court
4 that the forfeiture amount could not be satisfied, the district court
5 entered a preliminary substitute order of forfeiture, pursuant to 21
6 U.S.C. § 853(p) and Federal Rule of Criminal Procedure 32.2, for
7 Stevenson's "contributions, funds, benefits, rights to disbursements,
8 or other property" held by the New York State and Local Retirement
9 System. J.A. 1429. The final order of forfeiture of substitute assets
10 was entered on July 30, 2015.

11 Stevenson appeals the 36-month sentence, arguing that the
12 district court's calculation of his sentencing guidelines range was
13 improper because two of the enhancements that were selected (for
14 acting as a "public official," *see* U.S.S.G. § 2C1.1(a)(1), and as an
15 "elected public official," *see* U.S.S.G. § 2C1.1(b)(3)) were
16 impermissibly overlapping. He also argues that he was entitled to

1 have a jury decide the amount of forfeiture beyond a reasonable
2 doubt, and that designating his interest in his retirement fund as a
3 substitute asset was error as it is protected from such forfeiture by
4 Article V of the New York State Constitution. We disagree, and
5 affirm the sentence and forfeiture orders.

6 DISCUSSION

7 I. Sentencing Challenges

8 a. Enhancements

9 Stevenson's pre-sentence report included a computation of his
10 total offense level as 24, based on a base offense level of 14 and the
11 inclusion of three enhancements that added 10 levels.¹ Stevenson
12 does not contest the factual bases for that computation, but argues
13 that it included impermissible double counting due to its application
14 of two separate increases in his offense level relating to his service as

¹ The base offense level for an offense involving bribery, when the defendant is a public official, is 14. U.S.S.G. § 2C1.1(a)(1). Stevenson's offense level was then increased by two because the offense involved more than one bribe, U.S.S.G. § 2C1.1(b)(1), by four because the value of the payments exceeded \$10,000, but did not exceed \$30,000, U.S.S.G. §§ 2C1.1(b)(2), 2B1.1(b)(1)(C), and by four because the offense involved an elected public official, U.S.S.G. § 2C1.1(b)(3), for a total of 24.

1 a public official. The first of those increases was based on U.S.S.G.
2 § 2C1.1(a)(1), which elevated Stevenson's base offense level from 12
3 to 14 because he was a "public official." The second was U.S.S.G.
4 § 2C1.1(b)(3), which was used to assign Stevenson a 4-level
5 enhancement due to his status as an "elected public official."
6 Stevenson's argument is that both enhancements cannot be applied
7 to a single defendant because each addresses the same harm.
8 Stevenson did not make this objection before the district court, so we
9 review this claim of procedural unreasonableness for plain error.
10 See *United States v. Wernick*, 691 F.3d 108, 113 (2d Cir. 2012). A
11 showing of plain error requires that:

12 (1) there is an error; (2) the error is clear or obvious,
13 rather than subject to reasonable dispute; (3) the error
14 affected the appellant's substantial rights, which in the
15 ordinary case means it affected the outcome of the
16 district court proceedings; and (4) the error seriously
17 affects the fairness, integrity or public reputation of
18 judicial proceedings.
19

1 *United States v. Marcus*, 560 U.S. 258, 262 (2010) (internal quotation
2 marks and brackets omitted).

3 There was no error here, much less plain error.
4 “Impermissible double counting occurs when one part of the
5 guidelines is applied to increase a defendant’s sentence to reflect the
6 kind of harm that has already been fully accounted for by another
7 part of the guidelines.” *United States v. Volpe*, 224 F.3d 72, 76 (2d Cir.
8 2000) (internal quotation marks omitted). Nonetheless, “multiple
9 adjustments may properly be imposed when they aim at different
10 harms emanating from the same conduct.” *Id.* The relevant
11 question, then, is whether the two enhancements “serve identical
12 purposes”—in which case applying both would be double counting
13 and would demonstrate procedural irregularity—or whether they
14 “address separate sentencing considerations.” *Id.*

15 We conclude that the two enhancements do not serve identical
16 purposes or address the same harm. While a betrayal of public trust

1 is a serious matter in any criminal case, it may be considered a
2 greater harm when committed by one who has been elected to office
3 and not simply appointed to a public position. As the Eleventh
4 Circuit has noted,

5 [b]ecause of the critical importance of representative
6 self-government, a guideline that applies to any public
7 official who betrays the public trust does not fully
8 account for the harm that is inflicted when the trust that
9 the official betrays was conferred on him in an election.
10 Being a bribe-taking 'elected public official' is different
11 from being a run-of-the-mill, bribe-taking, non-elected
12 'public official.'"

13
14 *United States v. White*, 663 F.3d 1207, 1217 (11th Cir. 2011) (some
15 internal quotation marks and brackets omitted); *see also United States*
16 *v. Barraza*, 655 F.3d 375, 384 (5th Cir. 2011) (rejecting claim that
17 simultaneous application of U.S.S.G. § 2C1.1(a)(1) and § 2C1.1(b)(3)
18 constitutes double counting); *United States v. Gilmore*, No. CR 10-200-
19 02, 2012 WL 1377625, at *6 (W.D. La. Apr. 18, 2012) (noting that the
20 term "public official is construed broadly to cover persons who are
21 not even employees of a local or state government," and finding no

1 double counting when both U.S.S.G. § 2C1.1(a)(1) and § 2C1.1(b)(3)
2 are applied). Thus, we conclude that the application of sentencing
3 enhancements under both U.S.S.G. §§ 2C1.1(a)(1) and 2C1.1(b)(3) did
4 not here constitute double counting.

5 **b. Disparity**

6 Stevenson also argues that his sentence was procedurally
7 unreasonable because it reflected an impermissible disparity under
8 18 U.S.C. § 3553(a)(6) between the sentence received by Stevenson
9 and those of his co-defendants (the Businessmen: Igor Belyansky,
10 Slava Belyansky, Igor Tsimerman, and David Binman).

11 We also reject this argument. 18 U.S.C. § 3553(a)(6) requires
12 that a sentencing court consider “the need to avoid unwarranted
13 sentence disparities among defendants with similar records who
14 have been found guilty of similar conduct,” not that it consider the
15 disparities between co-defendants. *See United States v. Frias*, 521 F.3d
16 229, 236 (2d Cir. 2008) (“We have held that section 3553(a)(6)
17 requires a district court to consider nationwide sentence disparities,

1 but does not require a district court to consider disparities between
2 co-defendants.”).

3 Even so, the district court here did in fact consider the
4 sentences of the co-defendants when explaining Stevenson’s
5 sentence: the other defendants had lower guideline ranges, pled
6 guilty, and accepted responsibility for their conduct. As the district
7 court also noted, there were additional considerations in sentencing
8 Stevenson as an elected official who was bribed that did not apply to
9 the other defendants, the bribing parties who had no governmental
10 positions: “to compare the sentences of the bribing parties to the
11 sentence of the public official who was bribed is [to compare] apples
12 and oranges.” J.A. 1356. The district court did not commit
13 procedural error in its computation and application of the
14 sentencing guidelines.

15

1 **II. Forfeiture**

2 **a. *Libretti v. United States***

3 At Stevenson’s sentencing, the district court issued an order of
 4 forfeiture pursuant to 18 U.S.C. § 981(a)(1)(C) ² and 28 U.S.C.
 5 § 2461(c) in the amount of \$22,000 based on its conclusion regarding
 6 “the amount of proceeds traceable to the commission of the offenses
 7 charged in . . . the Indictment.” J.A. 1345–48. On appeal, Stevenson
 8 argues that this was improper because, under the Sixth Amendment,
 9 the facts relevant to the determination of the amount of a criminal
 10 forfeiture must be found by a jury beyond a reasonable doubt.³

11 In 1995, the Supreme Court addressed this issue directly,
 12 holding that there is no Sixth Amendment right to a jury

² “While § 981(a)(1)(C) is a civil forfeiture provision, it has been integrated into criminal proceedings via 28 U.S.C. § 2461(c).” *United States v. Contorinis*, 692 F.3d 136, 145 n.2 (2d Cir. 2012). 28 U.S.C. § 2461(c) provides that the procedures of 21 U.S.C. § 853 apply to such proceedings.

³ Stevenson also argues on appeal that the evidence failed to establish beyond a reasonable doubt that the proceeds traceable to him for the offenses he was convicted of amounted to \$22,000. However, the amount of a forfeiture order must be supported “only by a preponderance of the evidence,” and “the district court’s factual findings [are reviewed] for clear error.” *United States v. Gaskin*, 364 F.3d 438, 461–62 (2d Cir. 2004). Stevenson has pointed us to no such clear error here.

1 determination in a criminal forfeiture proceeding. *See Libretti v.*
2 *United States*, 516 U.S. 29, 48–49 (1995). Stevenson acknowledges
3 *Libretti*, but argues that more recent Supreme Court decisions have
4 served to effectively overrule it. Specifically, in *Apprendi v. New*
5 *Jersey*, 530 U.S. 466, 490 (2000), the Supreme Court held that “any
6 fact that increases the penalty for a crime beyond the prescribed
7 statutory maximum must be submitted to a jury, and proved beyond
8 a reasonable doubt.” Twelve years later, the Supreme Court applied
9 this principle to the calculation of a maximum criminal fine as part
10 of a sentence, holding that the amount of a fine, “like the maximum
11 term of imprisonment or eligibility for the death penalty, is often
12 calculated by reference to particular facts. . . . In all such cases,
13 requiring juries to find beyond a reasonable doubt facts that
14 determine the fine’s maximum amount is necessary to implement
15 *Apprendi*’s ‘animating principle’” *S. Union Co. v. United States*,
16 132 S. Ct. 2344, 2350, 51 (2012) (quoting *Oregon v. Ice*, 555 U.S. 160,

1 168 (2009)). And one year after that, the Supreme Court extended
2 the principle further to facts affecting a mandatory minimum
3 sentence of incarceration. *Alleyne v. United States*, 133 S. Ct. 2151,
4 2158 (2013).

5 After *Apprendi*, but before *Southern Union* or *Alleyne*, we
6 confirmed that *Libretti* remained good law. *United States v. Fruchter*,
7 411 F.3d 377, 380–82 (2d Cir. 2005). The Supreme Court has
8 explained that “[i]f a precedent of this Court has direct application
9 in a case, yet appears to rest on reasons rejected in some other line of
10 decisions, the Court of Appeals should follow the case which
11 directly controls, leaving to this Court the prerogative of overruling
12 its own decisions.” *Rodriguez de Quijas v. Shearson/Am. Express, Inc.*,
13 490 U.S. 477, 484 (1989). Consequently, faced in *Fruchter* with an
14 argument that “*Apprendi* and its progeny have so undercut *Libretti* as
15 to have overruled it sub silentio,” we held that “*Libretti* remains the
16 law until the Supreme Court expressly overturns it.” *Fruchter*, 411

1 F.3d at 381. In finding that neither *Apprendi* nor the other Supreme
2 Court cases urged upon us as having overturned *Libretti*⁴ had done
3 so, we pointed to “the distinction between criminal forfeiture
4 proceedings and determinate sentencing regimes,” explaining that
5 *Apprendi* and the later cases applying it “prohibit a judicial increase
6 in punishment beyond a previously specified range; in criminal
7 forfeiture, there is no such previously specified range.” *Id.* at 382,
8 383. Calling criminal forfeiture “a different animal from determinate
9 sentencing,” we concluded that “*Libretti* remains the determinative
10 decision.” *Id.* at 383.

11 Stevenson argues that the Supreme Court has since expressly
12 overruled *Libretti* in *Southern Union* and *Alleyne*. We disagree.

13 The argument that *Southern Union* expressly overruled *Libretti*
14 fails because—just like the decisions that we considered in
15 *Fruchter*—*Southern Union* also involved a determinate sentencing

⁴ *United States v. Booker*, 543 U.S. 220 (2005); *Blakely v. Washington*, 542 U.S. 296 (2004).

1 scheme. There, the statute through which the defendant corporation
2 was convicted of environmental violations provided a maximum
3 fine of \$50,000 for each day of violation. *Southern Union*, 132 S. Ct. at
4 2349. The jury was instructed only to find a violation, but not the
5 number of days the violation occurred. *Id.* However, the district
6 court imposed a fine of \$38.1 million, based on its calculation that
7 the violations occurred over a period of 762 days. *Id.* The Supreme
8 Court concluded that such a fine was not permitted based on the
9 jury's verdict, as the only violation that the jury necessarily found
10 was for one day. *Id.*

11 In so extending the *Apprendi* holding to criminal fines, the
12 Supreme Court noted that *Apprendi* required submission to a jury of
13 "any fact that increases the penalty for a crime *beyond the prescribed*
14 *statutory maximum*," *id.* at 2350 (emphasis added) (quoting *Apprendi*,
15 530 U.S., at 490), concluding therefore that there could be no
16 "*Apprendi* violation where no maximum is prescribed," *id.* at 2353.

1 For all of the reasons we explained in *Fruchter* concerning the
2 differences between determinate sentencing and criminal forfeiture,
3 it cannot therefore be said that *Southern Union* overruled *Libretti*.

4 Nor did the Supreme Court in *Alleyne* expressly overrule
5 *Libretti*. There, it concluded that 18 U.S.C. § 924(c)—which provides
6 increased mandatory minimum periods of incarceration based on
7 whether a firearm involved in a crime of violence or drug trafficking
8 crime was carried, brandished, or discharged—required a jury
9 finding for the increased punishments. It held that “any fact that
10 increases the mandatory minimum is an ‘element’ that must be
11 submitted to the jury.” *Alleyne*, 133 S. Ct. at 2155. It did not address
12 forfeiture and its different characteristics.

13 Whether it is mandatory minimums or statutory maximums,
14 those aspects of fixing the penalties for determinate sentencing
15 schemes are meaningfully different than those establishing the
16 amount of forfeiture in applying the Sixth Amendment right to a

1 jury trial. The calculation of the amount of forfeiture is not subject to
2 any statutory thresholds that increase penalties—whether they be
3 “floor[s]” or “ceiling[s],” *see id.* at 2160—and remains within the
4 province of the sentencing court. *Libretti* and *Fruchter* remain
5 controlling precedent, and we therefore decline to reverse the
6 district court’s forfeiture order.

7 **b. Pension Plan**

8 The district court issued an order following sentencing for the
9 forfeiture of \$22,000 in proceeds obtained from Stevenson’s offenses,
10 *see* 18 U.S.C. § 981(a)(1)(C); 28 U.S.C. § 2461(c); *see also* 21 U.S.C.
11 § 853(a), and later identified as a substitute asset for forfeiture “[a]ny
12 and all contributions, funds, benefits, rights to disbursements, or
13 other property held on behalf of, or distributed to, ERIC
14 STEVENSON, by the New York State and Local Retirement
15 System, . . . and all property traceable thereto,” J.A. 1429. These
16 contributions were made by Stevenson while he was a Member of
17 the Assembly. Stevenson did not serve in the State Assembly long

1 enough to become a vested member of the pension plan entitled to
2 pension distributions, but he is entitled to a refund of the
3 contributions that he made. See N.Y. Retire. & Soc. Sec. Law §§ 516,
4 517. In response to an inquiry made by this Court at the conclusion
5 of oral argument, the Government made a submission explaining
6 that it “intend[ed] to serve the Order on the New York State and
7 Local Retirement System (“NYSLRS”) and request that the NYSLRS
8 pay over the pension contributions” of Stevenson. Dkt. No. 93.

9 Stevenson argues that identifying his pension plan
10 contributions as a substitute asset and permitting seizure by the
11 Government was error as those contributions are protected by
12 Article V, Section 7 of the New York State Constitution, which states
13 that such a plan’s benefits “shall not be diminished or impaired.”
14 We disagree.

15 The Supremacy Clause of the U.S. Constitution provides that
16 “the Laws of the United States . . . shall be the supreme Law of the

1 Land; . . . any Thing in the Constitution or Laws of any State to the
2 Contrary notwithstanding.” U.S. Const. art. VI, cl. 2. Articles of the
3 New York Constitution, as state law, are therefore preempted if they
4 are inconsistent with federal law. *See Silkwood v. Kerr-McGee Corp.*,
5 464 U.S. 238, 248 (1984) (“[S]tate law is . . . preempted to the extent it
6 actually conflicts with federal law, that is, when it is impossible to
7 comply with both state and federal law.”).

8 Here, there is a conflict between New York law, providing
9 that the pension fund is not to be “diminished or impaired,” and
10 federal law, which authorizes forfeiture “irrespective of any
11 provision of State law,” of any property derived from the crime of
12 conviction, 21 U.S.C. § 853(a), and, where such property cannot be
13 located or has been transferred, of “any other property of the
14 defendant” in the same amount, *id.* at § 853(p)(1)-(2). Therefore,
15 Article V, Section 7 of the New York State Constitution is preempted
16 to the extent that it would prevent forfeiture of Stevenson’s

1 contributions to or benefits from a state pension or retirement
2 system up to \$22,000, the amount ordered forfeited.

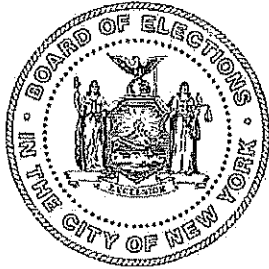
3 This conclusion is consistent with that of a number of our
4 sister circuits that have similarly held that various provisions of state
5 law are preempted by federal forfeiture law. *See United States v.*
6 *Fleet*, 498 F.3d 1225, 1232 (11th Cir. 2007) (“[W]e hold that where the
7 forfeiture of substitute property is concerned, 21 U.S.C. § 853(p)
8 preempts Florida’s homestead exemption and tenancy by the
9 entireties laws.”); *United States v. Wagoner Cty. Real Estate*, 278 F.3d
10 1091, 1097 (10th Cir. 2002) (“[W]e hold that federal preemption of
11 the Oklahoma homestead exemptions is necessary to carry out the
12 Congressional intent underlying § 881(a)(7) and to maintain
13 uniformity in federal forfeiture law.”); *United States v. Bollin*, 264
14 F.3d 391, 399 (4th Cir. 2001) (“[P]ursuant to the Supremacy Clause,
15 federal forfeiture law supersedes the garnishment protections that
16 Georgia state law provides for funds in an individual retirement

1 account.”); *United States v. Curtis*, 965 F.2d 610, 616 (8th Cir. 1992)
2 (“[T]he federal forfeiture statute, § 853(a), clearly superseded the
3 homestead exemption set forth in Iowa Code § 561.16.”).

4 * * *

5 For the foregoing reasons, we **AFFIRM** the judgment,
6 including the sentence imposed, the forfeiture order, and the order
7 identifying substitute assets by the district court.





The Board of Elections in the City of New York

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| 303559119 | | | | |
| Your name M | | 3 | Last name <u>STEVENSON</u> Suffix <u>MR.</u> First name <u>ERIC</u> Middle Initial <u></u> | |
| More information Items 5 & 7 are optional HAVA | | 4 | Birth date <u>09/11/29/1960</u> | 5 Sex <input checked="" type="checkbox"/> M <input type="checkbox"/> F |
| | | 6 | Phone <u></u> | 7 Email <u></u> |
| The address where you live | | 8 | Address (not P.O. box) <u>1261 CHISHOLM STREET</u> Apt. Number <u>Private</u> Zip code <u>110459</u> City/Town/Village <u>BROOKLYN, N.Y.C.</u> New York State County <u>BROOK</u> | |
| The address where you receive mail Skip if same as above | | 9 | Address or P.O. box P.O. Box <u></u> Zip code <u></u> City/Town/Village <u></u> | |
| Voting history | | 10 | Have you voted before? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | |
| | | 11 | What year? <u></u> | |
| Voting information that has changed Skip if this has not changed or you have not voted before | | 12 | Your name was <u>ERIC STEVENSON</u> Your address was <u>1343 PERSPECT AVENUE #33</u> Your previous state or New York State County was <u>BROOKLYN NY 10459</u> | |
| Identification You must make 1 selection For questions, please refer to Verifying your identity above. | | 13 | <input type="checkbox"/> New York State DMV number <u></u> <input checked="" type="checkbox"/> Last four digits of your Social Security number <u>XXXX-XX-1238</u> <input type="checkbox"/> I do not have a New York State driver's license or a Social Security number. | |
| Political party You must make 1 selection Political party enrollment is optional but that, in order to vote in a primary election of a political party, a voter must enroll in that political party, unless state party rules allow otherwise. | | 14 | I wish to enroll in a political party <input checked="" type="checkbox"/> Democratic party <input type="checkbox"/> Republican party <input type="checkbox"/> Conservative party <input type="checkbox"/> Green party <input type="checkbox"/> Working Families party <input type="checkbox"/> Independence party <input type="checkbox"/> Women's Equality party <input type="checkbox"/> Reform party <input type="checkbox"/> Other <u></u> I do not wish to enroll in a political party <input type="checkbox"/> No party | |
| Optional questions | | 15 | <input type="checkbox"/> I need to apply for an Absentee ballot. <input type="checkbox"/> I would like to be an Election Day worker. | |
| | | 16 | Affidavit: I swear or affirm that • I am a citizen of the United States. • I will have lived in the county, city or village for at least 30 days before the election. • I meet all requirements to register to vote in New York State. • This is my signature or mark in the box below. • The above information is true, I understand that if it is not true, I can be convicted and fined up to \$5,000 and/or jailed for up to four years. Sign <u>[Signature]</u> Date <u>9/25/19</u> | |

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City/Zip: BRONX 10459
DOB: 09/29/66
Sex: M
US Citizen: Y
Care of Name:

Status: Active As of 10/02/19
ED/AD: 076/079
Enrollment: Democratic
Registration Date: 06/04/85
Future Enrollment :
Future Enrollment Date:
Voter Type: R

Mailing Address

Line 1:
Line 2:
Line 3:
Line 4:

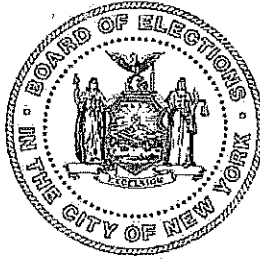
Poll site Information

Site Num/Name: X0189-PS 186 Walter J. Damrosch School
Address: 750 Jennings Street Bronx 10459

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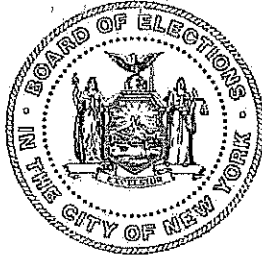
Status : Active As of 10/02/19
 ED/AD: 076/079
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 Registration Date : 06/04/85

Activities to the Voter Record:

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| 03/20/20 | SFerguso | 170 | Early Voting Poll Site Change Changed from: X0007 Changed to: 11937 |
| 10/02/19 | mwrotten | 45 | CH MINOR Changed from: Changed to: 2338 |
| 10/02/19 | mwrotten | 85 | CH STATUS X-A Changed from: X Changed to: A |
| 10/02/19 | mwrotten | 70 | CH STAT EFF DT Changed from: 20160113 Changed to: 20191002 |
| 10/02/19 | mwrotten | 12 | CH STRT NUM/SFX Changed from: 1343 Changed to: 1261 |
| 10/02/19 | mwrotten | 7 | PREV/NAME/ADDR/CTY/PH Changed from: Changed to: 1343 PROSPECT AVENUE 33 BRONX |

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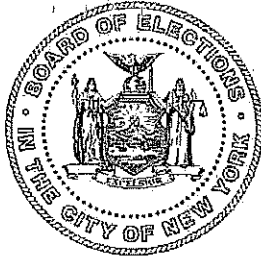
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 Name: STEVENSON, ERIC, ,
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Activities to the Voter Record:

| Date | OP ID | CD | Description |
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| 10/02/19 | mwrotten | 15 | CH VOTER EDAD Changed from: 024/079 Changed to: 076/079 |
| 01/13/16 | MIS | 0 | CH STATUS Changed from: A Changed to: X |
| 04/26/13 | MIS | 76 | CH EDAD - REAPP Changed from: 022/079 Changed to: 024/079 |
| 04/17/13 | sferguso | 19 | CH POLLSITE INFO Changed from: 0000 Changed to: X0189 |
| 07/10/12 | sferguso | 19 | CH POLLSITE INFO Changed from: 0000 Changed to: X0189 |
| 05/24/12 | MIS | 76 | CH EDAD - REAPP Changed from: 080/079 Changed to: 022/079 |
| 03/30/07 | bspital | 98 | LANGUAGE CHANGE Changed from: Changed to: ENG |

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Activities to the Voter Record:

| Date | OP ID | CD | Description |
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| 03/30/07 | swilson | 7 | PREV/NAME/ADDR/CTY/PH Changed from: -1 Changed to: |
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| 03/30/07 | hmato | 14 | CH APT NUM Changed from: APT 33 Changed to: 33 |
| 03/30/07 | msuarez | 7 | PREV/NAME/ADDR/CTY/PH Changed from: Changed to: -1 |
| 03/30/07 | msuarez | 7 | PREV/NAME/ADDR/CTY/PH Changed from: Changed to: 2006 |
| 03/30/07 | msuarez | 16 | CH ZIP5 Changed from: 104591728 Changed to: 10459 |
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| 09/18/03 | MMADIGA | 5 | DUP NOTICE CREATED Changed from: Changed to: |

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Activities to the Voter Record:

| Date | OP ID | CD | Description |
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| 06/27/02 | EAXBVREA | 15 | CH VOTER EDAD Changed from: ,030/79 Changed to: 080/79 |
| 10/26/99 | 2LP | 63 | SIG ONLINE REQ Changed from: Changed to: |
| 09/17/99 | 2AK | 85 | CH STATUS X-A Changed from: X 19981231 Changed to: A 19850604 |
| 12/31/98 | EAXB215I | 83 | CH STATUS A-X Changed from: A 19850604 Changed to: X 19981231 |
| 09/09/97 | 2FB | 5 | DUP NOTICE CREATED Changed from: Changed to: |
| 09/09/97 | 2FB | 36 | CH STATUS 1-A Changed from: 8 19970610 Changed to: A 19850604 |
| 06/10/97 | 2MCD | 33 | CH STATUS A-8 Changed from: A 19970513 RV Changed to: 8 19970610 |
| 05/14/97 | 2MN | 10 | CH FNAME/MI Changed from: ERIC ANDRE Changed to: ERIC |

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Board of Elections in the City of New York

Serial No: 303559119
 Name: STEVENSON, ERIC, ,
 Street: 1261 CHISHOLM STREET PVT
 City/Zip: BRONX 10459
 DOB : 09/29/66

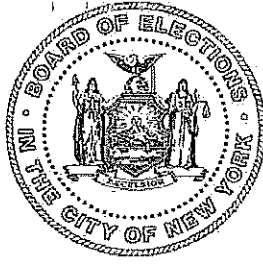
Status : Active As of 10/02/19
 ED/AD: 076/079
 Enrollment : Democratic
 Registration Date : 06/04/85

Activities to the Voter Record:

| Date | OP ID | CD | Description |
|--|-------|----|------------------|
| 05/14/97 | 2MN | 77 | CAF |
| Changed from: B1269495 BX Changed to: 303559119 BX | | | |
| 05/14/97 | 2MN | 63 | SIG ONLINE REQ |
| Changed from: Changed to: | | | |
| 11/09/92 | BATCH | 19 | CH POLLSITE INFO |
| Changed from: 1008801 Changed to: X009301 | | | |

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Board of Elections in the City of New York

Serial No: 303559119
 Name: STEVENSON, ERIC, ,
 Street: 1261 CHISHOLM STREET PVT
 City/Zip: BRONX 10459
 DOB: 09/29/66

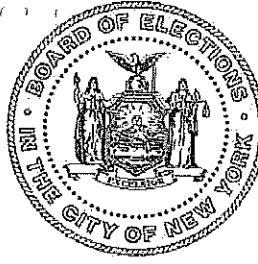
Status: Active As of 10/02/19
 ED/AD: 076/079
 Enrollment: Democratic
 Registration Date: 06/04/85

Voting History:

| Election | Type | Ballot | Type | Voter | Type | ED/AD |
|----------|------|--------|------|-------|------|---------|
| 11/05/19 | GE | R | | R | | 076/079 |
| 09/10/13 | PR | R | | R | | 024/079 |
| 11/06/12 | GE | R | | R | | 022/079 |
| 09/13/12 | PR | R | | R | | 022/079 |
| 09/14/10 | PR | R | | R | | 080/079 |
| 11/03/09 | GE | R | | R | | 080/079 |
| 09/29/09 | RO | R | | R | | 080/079 |
| 09/15/09 | SP | R | | R | | 080/079 |
| 09/15/09 | PR | R | | R | | 080/079 |
| 04/21/09 | SP | R | | R | | 080/079 |
| 11/04/08 | GE | R | | R | | 080/079 |
| 09/09/08 | PR | R | | R | | 080/079 |
| 11/06/07 | GE | R | | R | | 080/079 |
| 09/12/06 | PR | R | | R | | 080/079 |
| 11/08/05 | GE | R | | R | | 080/079 |
| 11/02/04 | GE | R | | R | | 080/079 |
| 09/14/04 | PR | R | | R | | 080/079 |
| 11/04/03 | GE | R | | R | | 080/079 |
| 02/25/03 | SP | R | | R | | 080/079 |
| 09/10/02 | PR | R | | R | | 080/079 |
| 10/11/01 | SP | R | | R | | 030/079 |
| 09/25/01 | PR | R | | R | | 030/079 |
| 11/07/00 | GE | R | | R | | 030/079 |

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Board of Elections in the City of New York

Serial No: 303559119
 Name: STEVENSON, ERIC, ,
 Street: 1261 CHISHOLM STREET PVT
 City/Zip: BRONX 10459
 DOB: 09/29/66

Status: Active As of 10/02/19
 ED/AD: 076/079
 Enrollment: Democratic
 Registration Date: 06/04/85

Voting History:

| Election | Type | Ballot | Type | Voter | Type | ED/AD |
|----------|------|--------|------|-------|------|---------|
| 09/14/99 | PR | A | | R | | 030/079 |
| 09/09/97 | PR | A | | R | | 030/079 |
| 12/31/88 | SP | R | | R | | 050/077 |
| 12/31/87 | SP | R | | R | | 050/077 |

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**LOCAL LAWS
OF
THE CITY OF NEW YORK
FOR THE YEAR 2021**

No. 15

Introduced by Council Members Brannan, Salamanca, Holden, Rivera, Ayala, Powers, Constantinides, Koo, Gjonaj, Adams, Vallone, Koslowitz, Louis, Kallos, Lander, Gibson, Deutsch and Borelli.

A LOCAL LAW

To amend the New York city charter, in relation to the disqualification of persons from holding an elected city office for certain felony convictions

Be it enacted by the Council as follows:

Section 1. The New York city charter is amended by adding a new chapter 50-A to read as follows:

CHAPTER 50-A

QUALIFICATION FOR ELECTED OFFICE

§ 1139 Qualification for Elected Office. In addition to any disqualifications for holding civil office in section 3 of the public officers law, no person shall be eligible to be elected to, or hold, the office of mayor, public advocate, comptroller, borough president or council member who has been convicted, provided such conviction has not been vacated pursuant to the criminal procedure law or title 28 of the United States code or pardoned by the governor pursuant to section 4 of article IV of the New York state constitution or the president pursuant to section 2 of article 2 of the United States constitution, of a felony, including an attempt or conspiracy to commit a felony, defined in:

1. sections 155.30, 155.35, 155.40, and 155.42 of the penal law, if the property stolen consisted in whole or in part of public funds;

2. *section 666 of title 18 of the United States code;*
3. *section 1001 of title 18 of the United States code, if such felony was committed through the use of, or in connection with, such person's elected office;*
4. *sections 1341, 1343 and 1346 of title 18 of the United States code; or*
5. *section 1951 of title 18 of the United States code.*

§ 2. This local law takes effect immediately.

THE CITY OF NEW YORK, OFFICE OF THE CITY CLERK, s.s.:

I hereby certify that the foregoing is a true copy of a local law of The City of New York, passed by the Council on February 11, 2021 and approved by the Mayor on February 25, 2021.

MICHAEL M. McSWEENEY, City Clerk, Clerk of the Council.

CERTIFICATION OF CORPORATION COUNSEL

I hereby certify that the form of the enclosed local law (Local Law No. 15 of 2021, Council Int. No. 374-A of 2018) to be filed with the Secretary of State contains the correct text of the local law passed by the New York City Council and approved by the Mayor.

STEPHEN LOUIS, Acting Corporation Counsel.

NYSCEF DOC. NO. 8

RECEIVED NYSCEF: 04/05/2021

UCS-R-90
(rev. 07/29/2019)

REQUEST FOR JUDICIAL INTERVENTION

Bronx Supreme COURT, COUNTY OF Bronx

Index No: _____ Date Index Issued: _____

For Court Use Only:

CAPTION Enter the complete case caption. Do not use et al or et ano. If more space is needed, attach a caption rider sheet.

Althea Stevens

-against-

Eric Stevenson, Commissioners of the Board of Elections in the City of New York

Plaintiff(s)/Petitioner(s)

IAS Entry Date

Judge Assigned

RJI Filed Date

Defendant(s)/Respondent(s)

NATURE OF ACTION OR PROCEEDING: Check only one box and specify where indicated.

COMMERCIAL

- ☐ Business Entity (includes corporations, partnerships, LLCs, LLPs, etc.)
☐ Contract
☐ Insurance (where insurance company is a party, except arbitration)
☐ UCC (includes sales and negotiable instruments)
☐ Other Commercial (specify): _____

NOTE: For Commercial Division assignment requests pursuant to 22 NYCRR 202.70(d), complete and attach the **COMMERCIAL DIVISION RJI ADDENDUM (UCS-840C)**.

REAL PROPERTY: Specify how many properties the application includes: _____

- ☐ Condemnation
☐ Mortgage Foreclosure (specify): ☐ Residential ☐ Commercial
 Property Address: _____

NOTE: For Mortgage Foreclosure actions involving a one to four-family, owner-occupied residential property or owner-occupied condominium, complete and attach the **FORECLOSURE RJI ADDENDUM (UCS-840F)**.

- ☐ Tax Certiorari - Section: _____ Block: _____ Lot: _____
☐ Tax Foreclosure
☐ Other Real Property (specify): _____

OTHER MATTERS

- ☐ Certificate of Incorporation/Dissolution [see NOTE in COMMERCIAL section]
☐ Emergency Medical Treatment
☐ Habeas Corpus
☐ Local Court Appeal
☐ Mechanic's Lien
☐ Name Change
☐ Pistol Permit Revocation Hearing
☐ Sale or Finance of Religious/Not-for-Profit Property
☐ Other (specify): _____

MATRIMONIAL

- ☐ Contested

NOTE: If there are children under the age of 18, complete and attach the **MATRIMONIAL RJI Addendum (UCS-840M)**.For Uncontested Matrimonial actions, use the Uncontested Divorce RJI (**UD-13**).

TORTS

- ☐ Asbestos
☐ Child Victims Act
☐ Environmental (specify): _____
☐ Medical, Dental, or Podiatric Malpractice
☐ Motor Vehicle
☐ Products Liability (specify): _____
☐ Other Negligence (specify): _____
☐ Other Professional Malpractice (specify): _____
☐ Other Tort (specify): _____

SPECIAL PROCEEDINGS

- ☐ CPLR Article 75 (Arbitration) [see NOTE in COMMERCIAL section]
☐ CPLR Article 78 (Body or Officer)
☐ Election Law
☐ Extreme Risk Protection Order
☐ MHL Article 9.60 (Kendra's Law)
☐ MHL Article 10 (Sex Offender Confinement-Initial)
☐ MHL Article 10 (Sex Offender Confinement-Review)
☐ MHL Article 81 (Guardianship)
☐ Other Mental Hygiene (specify): _____
☒ Other Special Proceeding (specify): Election Law

STATUS OF ACTION OR PROCEEDING: Answer YES or NO for every question and enter additional information where indicated.

YES NO

Has a summons and complaint or summons with notice been filed? ☐ YES ☒ NO If yes, date filed: _____
 Has a summons and complaint or summons with notice been served? ☐ YES ☒ NO If yes, date served: _____
 Is this action/proceeding being filed post-judgment? ☐ YES ☒ NO If yes, judgment date: _____

NATURE OF JUDICIAL INTERVENTION: Check one box only and enter additional information where indicated.

- ☐ Infant's Compromise
☐ Extreme Risk Protection Order Application
☐ Note of Issue/Certificate of Readiness
☐ Notice of Medical, Dental, or Podiatric Malpractice
☐ Notice of Motion
☐ Notice of Petition
☒ Order to Show Cause
☐ Other Ex Parte Application
☐ Poor Person Application
☐ Request for Preliminary Conference
☐ Residential Mortgage Foreclosure Settlement Conference
☐ Writ of Habeas Corpus
☐ Other (specify): _____

Date Issue Joined: _____

Relief Requested: _____

Return Date: _____

Relief Requested: _____

Return Date: _____

Relief Requested: _____

Return Date: _____

Relief Requested: _____

RELATED CASES:

List any related actions. For Matrimonial cases, list any related criminal or Family Court cases. If none, leave blank. If additional space is required, complete and attach the **RJI Addendum (UCS-840A)**.

| Case Title | Index/Case Number | Court | Judge (if assigned) | Relationship to instant case |
|------------|-------------------|-------|---------------------|------------------------------|
| | | | | |
| | | | | |
| | | | | |
| | | | | |

PARTIES:

For parties without an attorney, check the "Un-Rep" box and enter the party's address, phone number and email in the space provided. If additional space is required, complete and attach the **RJI Addendum (UCS-840A)**.

| Un-Rep | Parties | Attorneys and/or Unrepresented Litigants | Issue Joined | Insurance |
|-------------------------------------|--|---|---|--|
| | List parties in same order as listed in the caption and indicate roles (e.g., plaintiff, defendant; 3 rd party plaintiff, etc.) | For represented parties, provide attorney's name, firm name, address, phone and email. For unrepresented parties, provide party's address, phone and email. | For each defendant, indicate if issue has been joined. | For each defendant, indicate insurance carrier, if applicable. |
| <input type="checkbox"/> | Name: Stevens, Althea Role(s): Plaintiff/Petitioner | STANLEY SCHLEIN, STANLEY KALMON SCHLEIN ESQ., 481 KING AVE , BRONX, NY 10464, skschlein@gmail.com | <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO | |
| <input checked="" type="checkbox"/> | Name: Stevenson, Eric Role(s): Defendant/Respondent | 1261 Chisholm Street, Bronx, NY 10459 | <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO | |
| <input checked="" type="checkbox"/> | Name: Commissioners of the Board of Elections in the City of New York Role(s): Defendant/Respondent | 32 Broadway, New York, NY 10004 | <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO | |
| <input type="checkbox"/> | Name: Role(s): | | <input type="checkbox"/> YES <input type="checkbox"/> NO | |
| <input type="checkbox"/> | Name: Role(s): | | <input type="checkbox"/> YES <input type="checkbox"/> NO | |
| <input type="checkbox"/> | Name: Role(s): | | <input type="checkbox"/> YES <input type="checkbox"/> NO | |
| <input type="checkbox"/> | Name: Role(s): | | <input type="checkbox"/> YES <input type="checkbox"/> NO | |
| <input type="checkbox"/> | Name: Role(s): | | <input type="checkbox"/> YES <input type="checkbox"/> NO | |
| <input type="checkbox"/> | Name: Role(s): | | <input type="checkbox"/> YES <input type="checkbox"/> NO | |
| <input type="checkbox"/> | Name: Role(s): | | <input type="checkbox"/> YES <input type="checkbox"/> NO | |

I AFFIRM UNDER THE PENALTY OF PERJURY THAT, UPON INFORMATION AND BELIEF, THERE ARE NO OTHER RELATED ACTIONS OR PROCEEDINGS, EXCEPT AS NOTED ABOVE, NOR HAS A REQUEST FOR JUDICIAL INTERVENTION BEEN PREVIOUSLY FILED IN THIS ACTION OR PROCEEDING.

Dated: 04/05/2021

STANLEY KALMON SCHLEIN

Signature

1319722

Attorney Registration Number

STANLEY KALMON SCHLEIN

Print Name